

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

MAR 13 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Market Entry and Regulation
of Foreign-affiliated
Entities

)

)

) IB Docket No. 95-22

) RM-8355

) RM-8392

DOCKET FILE COPY ORIGINAL

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

BT North America Inc. ("BTNA"), by its attorneys, hereby replies to AT&T Corp.'s ("AT&T") opposition to its Petition for Reconsideration ("Petition") in the proceeding captioned above. In that Petition, BTNA urged the Commission to modify its Report and Order¹ so that: (1) resellers, as well as facilities-based carriers, could participate in private line arrangements interconnected to the switched network only at one end ("single-end interconnection"); (2) all policies applicable to foreign-affiliated carriers would apply equally to US carriers with ownership interests in foreign carriers having market power in the destination market; and (3) non-equity business relationships among US and foreign carriers would be scrutinized carefully for competitive concerns. Not surprisingly, AT&T opposes all of BTNA's reconsideration points. However, for the reasons discussed below, AT&T has demonstrated no public interest basis for denying BTNA the relief it has

¹

Market Entry and Regulation of Foreign-Affiliated Entities; Report and Order, FCC 95-475, IB Docket No. 95-22 (rel. Nov. 30, 1995 ("Report and Order")).

No. of Copies rec'd
List ABCOE

024

requested. Accordingly, the Commission should modify its Report and Order as proposed by BTNA in its Petition.

1. Permitting Resellers As Well As Facilities-Based Carriers To Offer Single-Ended Services Will Promote Competition, New Technologies and Price Competition.

As the Commission stated in its Report and Order, one of its primary objectives in this proceeding is to promote effective competition among service providers that expands service offerings to the public, promotes the development of innovative technology, and lowers prices.² BTNA in its Petition demonstrated that the Commission's distinction between a reseller and a facilities-based carrier vis-à-vis single-end interconnection served no public interest purpose and, in fact, undermined the FCC's abilities to achieve its objectives. AT&T's response is not to counter BTNA's position, but simply to state that BTNA has not demonstrated its point to AT&T's satisfaction.

To facilitate the discussion, BTNA is willing to share with the Commission an actual example of the benefits of its position. BTNA has been approached by a potential subscriber with a service request. The company is located in a European country -- one in which BTNA has no affiliate with market power -- and has established a customer service center there which responds to service calls from all through Europe. The company wants such calls in off-hours to be automatically "rolled-over" to a customer service center in the United

²

Report and Order, ¶¶ 1 and 8.

States. In essence, the company is trying to serve its customers efficiently and cost effectively by utilizing time zone differences.

Under the Commission's current policies, BTNA cannot meet this potential customer's need. The result is that the potential customer is denied his carrier of choice and limited as to the number of other service providers it can approach and solicit bids. Competition for this customer's business is less vibrant than it could, or should be. Moreover, BTNA's ability to serve the customer's other needs are put at jeopardy as most consumers prefer to do business with a single provider.

According to AT&T, the public is best served by this weakening of competition because allowing resellers to engage in single-end interconnection will promote "one-way settlements bypass," and the lost revenues for facilities-based carriers will not be sufficiently off-set by the revenues such carriers receive from providing the resellers with the private line facilities used to provide the service. While AT&T alleges such is the case, the validity of its proposition is not self-evident. The Commission's policy allows one-end interconnection -- not one-way diversion -- which means that private lines can be interconnected to the PSTN at either the US or the destination end and that traffic can flow in either direction. There is no reason to presume that extending the policy to resellers will exacerbate the settlements imbalance because all single-end interconnected traffic will be inbound to the US.

BTNA urges the Commission to follow the admonition of the United States Court of Appeals for the District of Columbia that, when faced with

conflicting presumptions of future events, a month of experience is worth a year's worth of administrative hearings.³ The FCC should allow resellers to provide single-end interconnection services on routes where they have no affiliate with market power. This will inevitably promote competition, expand international traffic and put downward pressure on accounting rates -- all with minimal potential for harm. If AT&T suffers the harm alleged, the FCC is more than capable of remedying the situation. On the other hand, if BTNA is correct, then the public will have benefited.

2. All Policies Applicable to Foreign-affiliated Entities Should Apply to Foreign Carriers Affiliated with US Interests.

BTNA in its Petition urged the FCC to reconsider its decision not to apply competitive safeguards to US carrier acquisition of an ownership interest in foreign carriers with market power. It noted that the danger of anti-competitive behavior when a US-based carrier has an ownership interest (direct or indirect) in a foreign carrier that possesses market power in the destination market is no less than when a foreign interest holds an interest in an American carrier.

Significantly, AT&T does not deny BTNA's assertion. Rather, it sees no reason for the Commission to adopt BTNA's position "because the U.S. carrier, as the controlling entity, has the ability to prevent [anti-competitive] behavior."⁴

³ American Airlines, Inc. v. CAB, 359 F.2d 624, 633 (1966).

⁴ AT&T Opposition To Petitions For Reconsideration, p. 8.

AT&T's argument is misplaced. The fact that the US carrier can control the behavior of the foreign carrier is irrelevant: The real issue is whether the foreign carrier can harm competition in various ways, including discriminating in favor of its US parent or affiliate. In that regard, there is no difference. Accordingly, BTNA suggests that there is no reasoned basis on which to distinguish between the situations and apply disparate policies. Moreover, doing so is not in the public interest because it gives one competitor an artificial advantage over the other and thus lessens competition unnecessarily.

3. The Commission Should Recognize that
 Non-Equity Business Relationships Can
 Raise The Same Concerns As Equity Relationships.

BTNA in its Petition urged the FCC to require US carriers to notify it within 30 days of the creation of any co-marketing or other non-equity business arrangements with foreign carriers. AT&T does not object to BTNA's position but states that any filing requirements should be properly framed and applied on an even-handed basis. BTNA agrees that regulatory burdens should be no greater than necessary to protect the public interest.

BTNA renews its request for the Commission to investigate AT&T's WorldPartners and Unisource alliances. While AT&T asserts in its opposition that its WorldPartners and Unisource alliances are "entirely non-exclusive," exclusivity is a factual issue that should be determined by the Commission. Since AT&T has yet to file the underlying agreements, the Commission has

nothing apart from AT&T's bare assertions on which to base its conclusions, and so the Commission should require AT&T to file the relevant documents.

The Commission should move promptly to investigate WorldPartners and Unisource, since the comments filed by various parties on AT&T's ex parte request for nondominant treatment for its international services raise serious questions about the behavior of AT&T and its venture partners. Sprint complains in its comments that Philippines Long Distance Telephone Company, a member of WorldPartners, is refusing to grant Sprint the same accounting rate it has granted to AT&T with volume thresholds adjusted for Sprint's much lower levels of traffic.⁵ Similarly, Esprit Telecommunications, U.K. states that "many of the members [of] AT&T's UniWorld, UniSource, and WorldPartners alliances . . . simply have been unwilling to negotiate in good faith with new entrants like Esprit for correspondent and interconnection agreements or to make international circuits available in a timely manner, and on reasonable terms and conditions."⁶ Thus, the Commission should move quickly to require AT&T to disclose all agreements regarding its foreign carrier alliances.

CONCLUSION

BTNA's suggested modifications to the Commission's Report and Order do not undermine the FCC's enunciated public interest objections. To the

⁵ In Re Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier (International), Comments of Sprint Communications Company, L.P., CC Docket No. 79-252, filed January 11, 1996, at 17-18.

⁶ In Re Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier (International), Comments of Esprit Telecom, U.K., CC Docket No. 79-252, filed January 11, 1996, at 1-2.

contrary, permitting facilities-based carriers and resellers to offer single-end interconnections in competition with each other; ensuring that all regulatory burdens and limitations are even-handedly applied; and reviewing business arrangements to ensure they are not anti-competitive all are integral to ensuring that the Commission's goals are achieved. Accordingly, BTNA respectfully urges the Commission to grant it the relief requested herein.

Respectfully submitted,

BT NORTH AMERICA INC.


Cheryl Lynn Schneider


Joan M. Griffin

Its Attorneys

601 Pennsylvania Ave. NW
Suite 725
Washington, DC 20004
(202) 639-8222

March 13, 1996

CERTIFICATE OF SERVICE

I, Karen L. Cross, do hereby certify that the foregoing Reply to Opposition to Petition for Reconsideration was served this 13th day of March, 1996, by first-class mail, postage prepaid, on the following parties listed below:

Robert S. Koppel
Vice President
International Regulatory Affairs
WorldCom, Inc.
15245 Shady Grove Road, Suite 460
Rockville, MD 20850

Robert J. Aamoth
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005

Leon M. Kestenbaum
H. Richard Juhnke
Sprint Communications Co.
1850 M Street, N.W., Suite 1100
Washington, D.C. 20036

Paula V. Brillson
John M. Scorce
Donald J. Elardo
MCI Telecommunications
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Rachel J. Rothstein
Senior Regulatory Counsel
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Encarnita Catalan-Marchan
Maria Pizarro-Figueroa
Telefonica Larga Distancia
De Puerto Rico, Inc.
Metro Office Park
Building No. 8, Street No. 1
Guaynabo, PR 00922

Philip V. Permut
Kelley Drye & Warren
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Alfred M. Mamlet
Stewart A. Baker
Philip L. Malet
Marc A. Paul
Colleen A. Sechrest
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

Stephen Garavito
Elaine R. McHale
James J.R. Talbot
295 Maple Avenue
Room 3235A3
Basking Ridge, NJ 07920

March 13, 1996


Karen L. Cross